

47

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Revn. Appln. No D-10 of 2018

Date of
Hearing
19.02.2019

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objections.
2. For hearing of Case.

Mr. Habibullah G. Ghouri, advocate for applicant, along with applicant.
Mr. Sharafuddin Kanhar, APG

Through this application the applicant claims himself to be owner of vehicle viz. Truck bearing Registration No.QAB-8696, Model-1974, which was booked by the Excise Police, Larkana in Crime No.02/2005 under Section 9(c) of Control of Narcotic Substances Act, 1997. The main case was tried by learned Special Judge, Narcotics, Larkana vide Special Case No.23/2005 re-State vs. Haji Noor Ali & another, from whose possession the contraband as well as vehicle in question were recovered. After full-dressed trial the accused nominated in the FIR, namely, Haji Noor Ali and Abdul Kahir, both by caste Pathan, were acquitted of the charges by means of judgment dated 15.6.2006. After announcement of judgment the owner of the vehicle has not approached to trial Court or any forum for seeking custody of the vehicle in question. The applicant approached to trial Court by filing an application under Section 517, Cr.P.C on the pretext that he is owner of the vehicle. He, therefore, claimed its custody. His request has been turned down by the trial Court by means of order dated 01.09.2018.

Learned Counsel for the applicant submits that the original Registration Papers of the vehicle in question along with vehicle are lying with the trial Court, therefore, original owner had not come; however, he has sold out the same to the present applicant and, therefore, he has filed instant application to have its custody on superdari basis. In support of his contentions, he has placed reliance upon the cases reported in 2010 SCMR 1181, 2013 MLD 1488 and 2002 P.Cr.L.J 97.

Conversely, learned APG for the State opposes the present application, on the grounds that applicant is not real owner of the vehicle in question, therefore, his application being misconceived was rightly

48

rejected by the trial Court. He further submits that property in question was seized along with contraband as well as its original Registration Papers and, therefore, right from its capture/seizure is in custody of the Court, hence its owner, whosoever, was not competent to sell out the same without its physical possession as well as prior permission of the Court concerned.

We have heard learned Counsel for the applicant, learned APG for the State and have perused the material available on record.

Admittedly, the applicant is not real owner of the vehicle in question, therefore, is not entitled for its custody, as claimed by him. The real owner, in whose name the registration is existing, had not come before the trial Court or before this Court to have its custody on superdari etc. The applicant has produced alleged sale agreement, which shows that he has purchased the vehicle in question from Malak Wazir Ahmed, who was not nominated accused of the FIR. Besides, it is barred by Section 74 of the Control of Narcotic Substances Act, 1997 that the property once seized while trafficking or transporting the contraband cannot be restored to its owner or the person, in whose possession lastly it was.

In view of above, we are of the view that the impugned order dated 01.9.2018 passed by the trial Court/Sessions/Spl. Judge CNS, Larkana does not suffer from any illegality, therefore, instant revision application being devoid of merit is dismissed.


JUDGE


JUDGE